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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/785,661	02/23/2004	N. David Crow	BIT 203-01	2676				
7590 Christopher A. Wiklof 3531 99th St. SE Everett, WA 98208	09/13/2007		<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">LEWIS, RALPH A</td></tr></table>		EXAMINER		LEWIS, RALPH A	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/785,661

Applicant(s)

CROW, N. DAVID

Examiner

Ralph A. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-11,13-15 and 28-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-11,13-15, 28-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **Indication of Allowability Withdrawn**

The indicated allowability of claims 1-11, 13-15 and 28-40 in the office action of 10/18/2006 is withdrawn in view of the newly discovered reference(s) to Baker (US 3,464,115). Rejections based on the newly cited reference(s) follow.

### **Rejections based on Prior Art**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-11, 13, 14, 28, 31-34 and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Baker (US 3,464,115).

Baker discloses an apparatus for measuring a patient's bite comprised of a mount 34 (figure 2) for removable attachment to mounting point 38, a mechanical coupling 40, 31, 32, 26, 12, 15 coupled to the mount 34 and an articulating film holder 50, 51 coupled to the holder that allows for lateral adjustment to match the width of the patient's dental arches. In regard to the "film" limitation, the examiner is of two positions. First, the wax blocks 16 and 17 which attach at 57, 58 record the position of the patient's teeth and meet the vague "film" limitation. Secondly, it is noted that "film" is not positively claimed as part of the invention, consequently even if one were to

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interpret the language as requiring a flat thin sheet of recording material, the examiner is of the position that the Baker prongs 57 and 58 are capable of holding a flat thin sheet of recording material. In regard to claim 7, note Figure 4. In regard to claim 14, elements 50 and 51 meet the broad "forceps" limitation, or in the alternative are capable of receiving a pair of unclaimed forceps.

In regard to claim 28, note nose posts 60, 61 of Baker that run parallel with the patient's nose, rod holder 45 and spreader 56, 47, 50, 51. It is noted in general that it would help applicant to define over the prior art if applicant would set forth the structure of elements rather than just naming them (e.g. "nose post").

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 15, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (US 3,464,115) in view of Evans (US 1,052,806).

In Baker, the measuring apparatus is fixed to the patient by indexing stubs which rest in a patient's ears, Evans, however, for a similar measuring device teaches that it is desirable to attach such a measuring mechanism to the frame of a pair of glasses 1. to have merely provided Baker with an attachment 23, 24, 25 as taught by Evans so that the Baker device could be attached to a pair of glass frames rather than stubs which are

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to be inserted into the patient's ears would have been obvious to one of ordinary skill in the art.


Claims 29, 30 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (US 3,464,115).

In regard to claims 29 and 30, to have replaced the coupling joint of the Baker measuring device with a conventional prior art coupling joint would have been obvious to one of ordinary skill in the art as a matter of routine. In regard to claim 30, the use of a common spring to help bias the jaw members 50 and 51 of Baker would have been obvious to one of ordinary skill in the art in order to assist in the tightening mechanism.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis  
August 22, 2007

  
Ralph A. Lewis  
Primary Examiner  
AU3732